

SMALL CLAIMS, BIG IMPLICATIONS: USABILITY OF LEGAL SYSTEMS IN THEORY AND PRACTICE

The purposes of this article are many: partly cathartic, educational, persuasive and reflective. It seeks to examine the legal system, profession and discipline through my experience of a Small Claims court case. The perspective I bring to this is multidisciplinary: given my background in Cultural Studies, I am interested in legal practice and how its associated relationships of power are negotiated between practitioners and citizens; as a lecturer in Information Technology, I am intrigued by the usability of systems; and as an academic, I am fascinated by the discursive differences between disciplines. Therefore, this article will examine how the cultural and technical practice of law impacts its usability as a system through my personal experience as a user interacting with the system and its legal practitioners.

The notion of usability is now a mainstay of technology studies and practice, but its rise as a movement has paralleled the increasing ubiquity of the Internet. Usability can be broadly defined as the degree of ease and speed with which a system can be used, leading to terms which describe systems as ‘user-friendly’ or ‘user-hostile’. As a system becomes more complex, there is a greater need to consider usability issues if the system is to remain human-centred and relevant to user needs. It is my contention that such principles of usability can be applied to and offer a means of analysing the legal system.

What lead me to Small Claims court had nothing to do with my civic or professional roles, but instead, my responsibility as the daughter of parents for whom English is a

second language. As owners of a restaurant, my parents were being taken to court over an alleged failure to pay a company contracted to install and clean a grease trap. Language and the traversing of disciplinary discourses would become critical to the management of the entire experience in translating between Cantonese and English, and within the latter, the vocabularies of law and industrial waste.

In the courtroom on the day of the hearing, the magistrate called for (what sounded like) ‘Liu Xiao Jin’ to make himself known to the court. My father hesitated as this sounded somewhat like his name, but because nobody else had responded, thought that it must mean him. When he stepped up to the court microphone, the magistrate promptly read out a charge of manslaughter and asked how he would plead. After the correct man was identified through a process of the magistrate calling out his name repeatedly using different pronunciations, the alleged perpetrator stared blankly in response to the charge, clearly not understanding what he was supposed to do or say and with no legal representation in sight. This is a compelling illustration of a situation where advocacy was absolutely necessary, but was refused or misunderstood by the defendant. In his book, *The Design of Everyday Things*, Donald Norman stresses the importance of visibility in a system, that is, the provision of clues or signposts that allow users to understand how to use the system and prevent frustration in the process. In this instance, the lack of visibility in the system made it hard for its users (the defendant and others in the courtroom) to understand who was being called before the magistrate, whose case was being heard at the time and the implications of this incomprehension.

Indeed, the purpose of legal representation is to assist users in learning how to use and navigate the legal system. However, much legal advice also recommends avoiding the involvement of lawyers in cases where the dispute can be resolved without them. In usability terms, this is an attempt at making the system more efficient to use, as it bypasses the need for users to employ ‘agents’ to act on their behalf. Theoretically, this conciliatory approach is taken by the Small Claims division of the courts. Claims are supposedly dealt with more informally and without the rigours of formal legal requirements. Lawyers are discouraged in order to prevent legal costs surpassing the amounts claimed. As the court registrar advises in the information distributed to plaintiffs and defendants, ‘parties may be legally represented at the hearing but the recovery of costs is limited to the party’s disbursements’. In other words, the award of claims does not include the legal costs of bringing it to court.

When our case was finally called, the magistrate requested us to identify ourselves to the court. I introduced my father, then myself as the defendant’s daughter who would be representing him given his English language difficulties. The plaintiff’s solicitor introduced himself, then pointed out his reservations about my representative role if I was not a legal practitioner. When I confirmed that I was not a lawyer, the magistrate warned that I was only permitted to assist my father and not represent him. As I understood it, the privilege of undertaking legal representation rests only with lawyers: with my father sitting beside me, I was not allowed to take instruction and speak for him. This exemplifies a ‘mode error’ in which the information given about the system describes it operating in one way (that is, without the need for legal representation), but in practice, it works in another (that is, restricting the kind of

representation that is possible). Because of this, the potential efficiencies offered by bypassing an agent acting on the user's behalf are negated.

By contrast, the plaintiff's solicitor, who had only been appointed that morning, could apparently and appropriately represent the plaintiff in his absence. It was because the plaintiff's solicitor was so ill-prepared to represent his client that he requested a postponement of the hearing. When I objected, the magistrate sternly reminded me that he would not tolerate any more attempts at 'representation'. He proceeded to ask my father directly his opinion of a postponement, to which my father objected. The magistrate concurred, noting that we had supplied the required documentation while the plaintiff had not, and refused the postponement. He then offered the plaintiff's solicitor the option of having the case dismissed or struck out. The latter was chosen without a reason given, so I asked the magistrate how they differed and the consequences that each entailed. He replied that I should seek the answers from the court registrar's office as he would not waste his time explaining such matters. This lack of feedback would be considered by Norman to be a system flaw, as he argues that good design should include 'sending back to the user information about what action has actually been done, what result has been accomplished'.

Being silenced for being unfamiliar with the vocabulary of the court seems essentially an issue of disciplinary and discursive boundaries, advantaging those who are extremely familiar with legal jargon and practices. This sort of knowledge of the legal system can be defined according to Norman's conceptualisation of 'knowledge in the head', which relies on facts, rules and procedures, thereby depending on those who are expert or well practised in the processes of the system.

Conversely, the court and its systems of administration presume this knowledge such that it becomes implicit and inaccessible to those without it. For example, I wanted to know why the venue for the hearing was different to where the pre-trial review had taken place, as no reason was given on the 'notice of receipt of record of action in which venue changed', (that is, the notification of venue change). Given that the plaintiff's business was in the northern suburbs of Sydney and my parent's business in the inner city, I could not fathom why the pre-trial review was held in the southern suburbs and the hearing assigned to a court even further to the south. As I discovered through my telephone enquiry, the Kogarah Local Court does not conduct hearings, so cases are then shuffled to the Sutherland Local Court.

Secondly, I wanted to ask how long the hearing was likely to take, as it was scheduled for 10am and the directions stated: 'You must ensure you attend court...at the nominated time, otherwise the matter may be dealt with in your absence.' Again, it was only because I telephoned the court that I was informed that I would have wait until the hearing was called, meaning that I could be at the court the whole day. 10am was the time the court opened and the magistrate began presiding, and there was no guarantee our case would be heard first, as apparently there is no particular order in which they are heard.

These critical incidents are indicative of low ease of use where users repeatedly struggle to achieve a simple task, and of 'mode error' whereby the documentation provided to parties differed from the information given by telephone, and indeed, from how legal proceedings were conducted within the court.

The pre-trial review was another example. It is intended to establish whether the parties have prepared their cases and considered the possibilities of settlement. Yet the plaintiff's failure to submit his written statements by the deadline a week prior to the hearing went unnoticed. Also, the turnover of solicitors representing the plaintiff, three in total, from the issue of the claim to the hearing, did not raise any concerns. As usability experts maintain, error detection and recovery is key to the usability of a system and more importantly, in ensuring a more productive experience of the system. Such anomalies should be easily detected, if only to save the court the time and cost of conducting a hearing in which parties are evidently unprepared.

Based on my reading of court procedures, my expectations were that 'the proceedings are conducted with as little formality and technicality as the proper consideration of the matter permits'. Yet the anticipated informal and relaxed atmosphere in which the magistrate would mediate and conciliate, was incongruous with the bowing to 'your worship' upon entering and exiting the courtroom. Any attempt to make the experience less intimidating was undermined by the absolute authority wielded by the magistrate and the extent to which only the lawyers were privy to the rules of engagement with him.

In writing about the design of everyday things, Norman refers to objects and technologies that play an important role in our daily lives. The legal system pervades our existence in similar ways: it is intrinsic to how we function on a day-to-day basis and therefore, has to be designed with consideration to usability issues. Yet end-users are likely to be more at ease in their interactions with other complex technical systems

(such as withdrawing money from an ATM, paying bills over the Internet, consulting a computerised train timetable, retrieving information from an automated telephone system) than with systems of legal practice.

If the legal system is designed to be an 'everyday thing' in which the rule of law applies to every member of the community, why is the usability of the legal system so poor to the extent that end-users must resort to appointing agents in order to assist them in navigating the system? While users of the legal system include legal practitioners, the system is skewed mainly towards this type of user. My experience as a user who did not fit into this category could be regarded as a test of the system's usability. Against the same criteria of usability that the testing of other complex technical systems undergo, the legal system was found to fail in providing adequate levels of:

- visibility or clues as to its operational processes,
- ease-of-use to inspire trust in the user,
- efficiency-of-use to prevent frustration in the user,
- feedback illustrating the consequences of an action, and
- error detection and recovery.

That's no small claim.